

## 37 Am. Jur. 2d Fraud and Deceit § 192

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### Fraud and Deceit

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 4. Credit, Solvency, and Financial Standing

## § 192. Representations as to checks and notes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  [27](#), [28](#)

### A.L.R. Library

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 44](#) (Complaint, petition, or declaration—For damages—Fraud in obtaining draft from bank—Purchaser gave bank worthless check)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 201](#) (Answer—Defense—Fraud in obtaining note—Representation that plaintiff was authorized by defendant's creditor to take defendant's note in satisfaction of debt)

The drawing of a check where there are insufficient funds in the bank to pay it is a false representation that the drawer has funds sufficient to meet the check in the hands of the drawee.<sup>1</sup> Knowledge as to the sufficiency of funds on deposit to pay a check will ordinarily be inferred or presumed from the fact of drawing and delivering the check.<sup>2</sup>

A person who is induced to discount a note and extend credit for the proceeds to the maker-payee in reliance upon false and fraudulent representations as to the maker-payee's financial condition may upon discovery of the fraud rescind the credit so extended, and the amount advanced becomes immediately due and payable and is recoverable or available as an offset.<sup>3</sup>

False representations that a note<sup>4</sup> or check<sup>5</sup> is good, or false representations as to the solvency of the makers<sup>6</sup> of the notes sold, or that the notes sold<sup>7</sup> are perfectly good,<sup>8</sup> or "as good as gold,"<sup>9</sup> have been held to constitute actionable fraud. Generally, such a statement is regarded as a statement of fact rather than a mere expression of opinion<sup>10</sup> although the form of the statement and the circumstances in which the representation was made may indicate that it was mere opinion and consequently not actionable.<sup>11</sup> Some courts thus hold that representations of this type may be either statements of fact or expressions of opinion.<sup>12</sup>

A purchaser of checks, in scanning signatures of sellers' representatives into a computer and electronically "pasting" these signatures on assignment forms which contain numerous warranties to which the sellers have never agreed, and in then affixing these "manufactured" assignments to a complaint which the purchaser serves on the drawer of the checks, in order to make it appear that the purchaser is a holder in due course not subject to various defenses that the drawer might otherwise assert, makes a material misrepresentation of presently existing or past fact, of the kind required to support a common law fraud claim.<sup>13</sup>

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#### Footnotes

- 1 [Hi-Pro Fish Products, Inc. v. McClure](#), 346 F.2d 497 (8th Cir. 1965); [In re Damiani](#), 157 B.R. 17 (Bankr. N.D. Ohio 1993) (applying Ohio law); [A. Sam & Sons Produce Co. v. Campese](#), 14 A.D.2d 487, 217 N.Y.S.2d 275 (4th Dep't 1961).
- 2 [§ 465](#).
- 3 [Wolf v. National City Bank of New York](#), 170 A.D. 565, 156 N.Y.S. 575 (1st Dep't 1915).
- 4 [Doolen v. Hulsey](#), 192 S.W. 364 (Tex. Civ. App. Amarillo 1917).
- 5 [Sparks v. Guaranty State Bank](#), 179 Kan. 236, 293 P.2d 1017 (1956).
- 6 [Binghamton Trust Co. v. Auten](#), 68 Ark. 299, 57 S.W. 1105 (1900).  
A buyer's tender of "insufficient funds" checks constituted a written misrepresentation of the solvency of the buyer. [Amoco Pipeline Co. v. Admiral Crude Oil Corp.](#), 490 F.2d 114, 13 U.C.C. Rep. Serv. 1019 (10th Cir. 1974).
- 7 [Standard Motors Finance Co. v. Mitchell Auto Co.](#), 173 Ark. 875, 293 S.W. 1026, 57 A.L.R. 877 (1927).
- 8 [Crane v. Elder](#), 48 Kan. 259, 29 P. 151 (1892); [Doolen v. Hulsey](#), 192 S.W. 364 (Tex. Civ. App. Amarillo 1917).  
A representation that certain notes signed by various persons are "good bankable paper" is a representation of fact. [Engen v. Merchants' & Mfrs.' State Bank](#), 164 Minn. 293, 204 N.W. 963, 43 A.L.R. 610 (1925).
- 9 [Doolen v. Hulsey](#), 192 S.W. 364 (Tex. Civ. App. Amarillo 1917).
- 10 [Crane v. Elder](#), 48 Kan. 259, 29 P. 151 (1892).
- 11 [Andrews v. Jackson](#), 168 Mass. 266, 47 N.E. 412 (1897).
- 12 [Andrews v. Jackson](#), 168 Mass. 266, 47 N.E. 412 (1897).
- 13 [Triffin v. Automatic Data Processing, Inc.](#), 394 N.J. Super. 237, 926 A.2d 362 (App. Div. 2007).

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